Court no.3

Criminal Misc.application no.291 of 2002

Mahendra Singh ..Applicant.

Versus

State of Uttaranchal and
Another ..Opposite parties.

Hon'ble Irshad Hussain J.

Heard Sri Dharmvir Sharma, learned counsel for the applicant and the learned Additional Government Advocate appearing on behalf of the State.

This is a petition under section 482 of the Code of Criminal Procedure (for short 'Code') for setting aside the impugned order dated 12.09.2002 passed by Session Judge, Pithoragarh under section 311 of the Code.

The complainant-witness Sukhvir was examined as P.W.1 on 05.09.2002 and he appears to have supported the prosecution version in his examination-in-chief. However, he resiled from his statement in the cross-examination and did not support the prosecution case about the identity of the accused. The witness was not declared hostile at that time and in view thereof, application under section 311 of the Code was filed to seek an opportunity to cross-examination the said witness so that the case of the prosecution may be put forward and the witness may be confronted with his statement as recorded under

section 161 of the Code. No doubt, at that time this was not done. However, it is of significance that the learned Session Judge took care to put question to the witness in cross-examination to have the things clarified and then the witness stood to his assertion as made in the cross-examination. Considering this aspect, there appear to be no need to formally declare the witness hostile. Since the witness was put to a question by the Session Judge,, there remained no justification to recall the witness for being cross-examined by the prosecution. In other words, the ends of justice did not require the cross-examination and, therefore, there was no merit in the application under section 311 of the Code. The learned Sessions Judge did not take into account this legal aspect of the matter and thereby made an error in allowing the application and recalling the witness for further cross-examination. The impugned order, thus, cannot legally be maintained and the same is hereby dismissed.

The petition is disposed of accordingly.

(Irshad Hussain, J.)

07.10.2002./B.